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Where, in Delaware, an appraiser appointed by complainant stockholders under Sec. 61 was found not to be a "disinterested" person, the Chancery Court dismissed the bill of complaint without prejudice to complainants' rights to proceed further to obtain appraisal and payment. (See page 247.) The Court of Chancery has dismissed the bill of complaint of a non-assenting stockholder, because of laches, where it was filed three years after a charter amendment and a reorganization plan became effective. (See page 247.)

In New York, the books and papers of an unlicensed foreign corporation, doing business in the state, were held subject to inspection by a director of the corporation. (See page 256.)

In Arkansas, persons creating a debt in the name of a corporation which had not been completely organized were held liable as partners. (See page 246.)

W. P. Preston
President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

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Contents for November

Dissolution or Withdrawal Before December 31

Where either the dissolution of a domestic corporation, or the withdrawal of a foreign corporation from a state in which it has been authorized to do business, is contemplated before the end of a calendar year, experience has taught that it is highly advisable, in many states, to initiate the dissolution or withdrawal proceedings as early as practicable, lest it be found impossible to consummate such steps before the end of the year, due to conditions imposed by the states involved.

An outstanding consideration which often suggests that a proposed dissolution or withdrawal be effected before the close of the calendar year is, of course, a desire to dispense with the outlay of franchise or other taxes which will accrue in many states if existence continues into the new year or if the right to remain in a state as a foreign corporation is not relinquished until after the end of the year has passed.

During recent years, more and more states have been requiring, as a condition precedent to dissolution or withdrawal, evidence that the corporation has fulfilled all requirements as to the payment of taxes and unemployment compensation contributions, certificates to that effect being required to be obtained from the officials administering the tax and unemployment compensation laws. This often involves the preparation and filing of income or other tax reports covering a final period to the date of dissolution or withdrawal, and the payment of the taxes assessed thereon. Plans to dissolve or withdraw within the time proposed may be upset because of the time required for the authorities to approve the reports or because of a requirement that an audit be first made of the corporation's books, to be effected by auditors of the state who may already have heavy schedules, and it may be that the audit will not be begun or completed within the time desired. In connection with dissolution, it is necessary in some states to publish notices several weeks in advance of the filing of the necessary documents or before liquidation can be completed.

If steps are not instituted in ample time in states where requirements such as those which have been outlined exist, it may not be possible to complete dissolution or withdrawal before the end of the year. Hence, when a dissolution or withdrawal is in prospect toward the end of a calendar year, it is usually found advisable to lay the ground work for such a step as early as possible.

Domestic Corporations

Alberta.

Maintenance of suit by Dominion company for several years ruled activity sufficient to overcome assertion that charter had not been used during those years. The lower court had dismissed this action brought by a Dominion company, on the ground that there had been a non-user by the company of its charter for three consecutive years, and that by virtue of s. 28 of the Dominion Companies Act, 1934 (Can.), c. 33, the charter had been forfeited and the company had no right to maintain the action, which was commenced in 1928. The Alberta Supreme Court, Appellate Division, took a different view, feeling it could not be said that the company had not used its charter for three consecutive years. "In my opinion," observed the court, "the bringing, and maintaining since 1928, the present action, and since 1935 the action along with which it was tried and also dismissed, as well as the activities of the trustee during the time when the company was in bankruptcy, under the order which was later vacated and set aside as being a nullity, constitute a user of the charter, and that there has been no period of time in which it can be said that there was non-user." *Confederation Land Corporation v. C. P. R.*, (1942) 2 D. L. R. 70.

Arkansas.

Persons creating debt in name of corporation which had not been completely organized held liable as partners. Sec. 3 of Act 255, Acts of 1931, governing organization of Arkansas corporations, contained a provision as follows: "Upon the filing with the Secretary of State of articles of incorporation, the corporate existence shall begin. Provided, a set of the Articles of Incorporation (bearing the filing marks of the Secretary of State) shall be filed for record with the County Clerk of the County in which the corporation's principal business office or place of business in this State is located." Defendants, when organizing a corporation, had filed the articles of incorporation with the Secretary of State but not with a County Clerk. They continued to operate as a corporation for a year thereafter, during which time the debt sued upon was contracted in the name of the company. Defendants were sued as partners. The Supreme Court of Arkansas ruled that defendants were liable for the debt, ruling that there had not been sufficient compliance with the incorporation law to create a de jure corporation. The court observed: "In order to exempt any association of persons from personal liability for the debts of a proposed corporation, they must comply fully with the act under which the corporation is created. A partial compliance with the act is not sufficient. Unless they comply fully with the act the business performed by them constitutes them a partnership." *Gazette Publishing Co. v. Brady et al.*, 162 S. W. 2d 494. Thos. T. Dickinson of Little Rock, for appellant. Talley, Owen & Talley of Little Rock, for appellees.

Delaware.

Where appraiser appointed by complainant stockholders under Sec. 61 was found not to be a "disinterested" person, court dismisses bill without prejudice to complainant's rights to proceed further to obtain appraisal and payment; objections to merger held nugatory as to common stock deposited under voting trust agreement and voted in favor of merger by trustees. In an action, brought by complainants as preferred stockholders of respondent, a Delaware corporation surviving from the merger of one Maryland and three Delaware companies, the appointment of an appraiser to act with two others in appraising complainants' stock was sought. Prior to the suit, the parties had each appointed an appraiser under Sec. 61 of the Delaware Corporation Law, but as these had failed to agree upon the third appraiser, the complainants sought to have the court designate a third appraiser. The company contended that the bill should have been dismissed because the appraiser appointed by the complainants was not a "disinterested" person, within the meaning of the statute. The Vice-Chancellor found from the evidence that the appraiser appointed by the complainants was not such a "disinterested" person and concluded that "since the person named as the first appraiser is disqualified, there is no occasion for the court to designate a third appraiser. Hence, the bill should be dismissed, without prejudice to any rights which complainants may have to proceed further to obtain an appraisal and payment of their preferred stock." Complainants also held voting trust certificates for shares of respondent's common stock which they had deposited subject to the provisions of a voting trust agreement. Respondent denied complainants' right to an appraisal or payment on account of such shares. The court, after an examination of the voting trust, under which it found that the trustees had lawfully voted the common shares in favor of the merger, concluded that "complainants' objections to the merger, in so far as they are based upon ownership of interests in common stock, must be treated as nugatory." *Scott et al. v. Arden Farms Co.*, 28 A. 2d 81. Commerce Clearing House Court Decisions Requisition No. 288304. Hugh M. Morris and Alexander L. Nichols of Morris, Steel, Nichols & Arsht, of Wilmington, for complainants. Caleb S. Layton of Richards, Layton & Finger of Wilmington, and John D. Van Cott of Milbank, Tweed & Hope of New York City, for respondent.

Chancery Court dismisses bill of non-assenting stockholder which was filed three years after amendment and reorganization plan became effective. Complainant filed its bill challenging the validity, against it as a non-assenting stockholder, of a plan of recapitalization of the defendant company. The bill was not filed, however, until three years after an amendment, giving effect to the plan, had been approved by a large majority of the stockholders. The Chancellor, after an examination of the evidence, ruled that the claim was barred, by laches and dismissed the bill. *Bay Newfoundland Co., Ltd. v. Wilson & Co., Inc.*, 28 A. 2d 157. Commerce Clearing House

Court Decisions Requisition No. 287564. Josiah Marvel, Jr., of Marvel & Morford of Wilmington, and Henry B. Hodge of the New York bar, of counsel, for complainant. Edwin D. Steel, Jr., of the office of Hugh M. Morris, of Wilmington, for defendant.

Illinois.

President permitted to recover on note given by corporation to cover salary due. At a time when defendant corporation owed its president, the plaintiff, $699. for unpaid salary, the corporation executed and delivered to him a note for that amount, signed by plaintiff as president and by a vice-president. Judgment was rendered for the plaintiff in a suit upon the note, in the Municipal Court of Chicago, the note having been lost or destroyed, and its existence being established by secondary evidence. Upon appeal, this judgment was affirmed by the Appellate Court of Illinois, First District, Second Division, which observed: "Since the record does not disclose that there were any creditors who could possibly be injured by the transaction, and no fraud or unfairness appears to have been perpetrated upon anyone, we perceive no reason why plaintiff should be precluded from recovering on his lost promissory note. The salary he had earned was payable to him in cash and his willingness to accept the note in lieu thereof does not stamp the transaction as illegal." *Schratt v. Accurate Instrument Co., Inc.*, 40 N. E. 2d 823. Gustav E. Beerly (John F. Diffenderffer, Jr., of counsel) of Chicago, for appellant. Howard D. Moses of Chicago, for appellee.

Nebraska.

Secretary of State, after dissolving a Nebraska corporation for nonpayment of occupation taxes, has no authority to levy such taxes for any year subsequent to such dissolution. In *Nebraska Central Building and Loan Association v. The Yellowstone, Incorporated*, 140 Neb. 422, 299 N. W. 474, decided in 1941, the Nebraska Supreme Court ruled that the Secretary of State has the statutory authority to dissolve a domestic corporation for nonpayment of occupation taxes due the state, but he is not empowered to levy occupation taxes against the corporation for any year subsequent to such dissolution. Upon motion for rehearing, the Nebraska Supreme Court has recently overruled the motion and adhered to its former opinion. *Nebraska Central Building and Loan Association v. The Yellowstone, Inc.*,* 11 Nebraska Supreme Court Journal 985. Commerce Clearing House Court Decisions Requisition No. 264982-A. Field, Ricketts, & Ricketts of Lincoln, for plaintiff, appellee. Walter R. Johnson, Atty. Gen., Robert A. Nelson, Asst. Atty. Gen., of Lincoln, for State of Nebraska, impleaded appellant.

* The full text of these opinions is printed in **The Corporation Tax Service, Nebraska, pages 1510 and 1512.**

New Jersey.

Writ of mandamus for inspection of corporate books and records allowed. In a recent instance, the Supreme Court of New Jersey granted a peremptory writ of mandamus to stockholders to permit them, their representatives and disinterested expert accountants chosen by them, to inspect the books and records of their corporation, upon a showing, among other circumstances, that the information desired was sought in good faith and was related to the stockholders' substantial interest in the corporation, and that the data was not obtainable through the means of the annual reports or through a partial audit of the books previously permitted one of the relator stockholders by the company. *Kemp et al. v. Schloss-Sheffield Steel & Iron Co. et al.*, 26 A. 2d 70. Osborne, Cornish & Scheck of Newark, for relators. Pitney, Hardin & Skinner and Waldron M. Ward of Newark, and Douglas Arant of Birmingham, Ala., for respondents.

Corporation, whose preferred stock was not redeemed at expiration of redemption period provided in charter, directed to adopt measures necessary to effect its redemption. Complainant preferred stockholders in defendant company sought to compel the redemption of the preferred stock. The charter contained provision for redemption, by vote of the majority of the board of directors, at $110 per share at the expiration of 15 years from the date of issue. The stock had been outstanding more than 15 years. No dividends had been paid on it since 1930, so that accumulated dividends at the rate of 7 per cent. amounted to more than $77 a share. The Court of Chancery observed that the words contained in the charter "that the stock 'shall be redeemed' at the expiration of 15 years must be given some reasonable meaning. Without that clause, the company has the privilege or option of redeeming the stock. The additional clause can be construed only as creating a positive obligation on the part of the corporation to redeem." "But the company's agreement to redeem its stock cannot be enforced at a time when the corporation is insolvent or when redemption would render the corporation insolvent." After an examination of the company's financial condition, the court expressed the belief that the company could not immediately raise the money needed to retire the preferred stock, without jeopardizing creditors' rights. After referring to the company's failure to prepare for the retirement of its stock, and noting that its inability to make payment immediately would not annul the preferred stockholders' contract, or prevent the court from awarding them a remedy, the court indicated that the corporation "will be compelled to adopt all measures necessary for performance. Counsel will employ their ingenuity to accomplish the redemption of the preferred stock." The court then made tentative suggestions as to how the company might proceed under the circumstances. *Mueller et al. v. Kraeuter & Co., Inc., et al.*, 25 A. 2d 874. Child, Riker, Marsh & Shipman and Jehiel G. Shipman of Newark, for complainant. Edward R. McGlynn of Newark, for defendants.

New York.

Directors, who exhausted assets through salary payments to themselves, held accountable to creditor of whose existence they were at the time unaware. Defendants, directors of a corporation, had, over a period of years during which the company was practically inactive, withdrawn substantial amounts from the corporate funds, as salaries, until the corporate assets were thus completely exhausted. This was done in ignorance of the fact that there was a creditor of the corporation. This creditor's claim was reduced to judgment and in this action it was sought to charge the defendants with the moneys withdrawn. The New York Supreme Court, Appellate Division, Second Department, reversed a judgment of the Special Term, which held that neither Section 58 of the Stock Corporation Law nor Section 60 of the General Corporation Law had been violated. It granted a new trial, indicating that "the extent to which defendants have violated these two sections and to which they must account will depend upon the amount of salaries to which they were fairly entitled for the services rendered during the period of the withdrawals." The court also ruled that the action was not barred by the six-year statute of limitations as this statute did not apply "where the action is brought under Section 60 of the General Corporation Law. In such case the cause of action does not accrue to a creditor until judgment has been obtained and execution returned unsatisfied; and the statute of limitations does not commence to run until the cause of action accrues to the creditor (Buttles v. Smith, 281 N. Y. 226). The same rule should be applied to actions by a creditor under Section 58 of the Stock Corporation Law (Island Paper Co. v. Carthage Timber Corp'n., 128 Misc. 246)." *Rosencranz, as receiver of Harry G. Doran Building Corporation v. Doran et al.*, New York Supreme Court, Appellate Division, Second Department, June 15, 1942. Commerce Clearing House Court Decisions Requisition No. 284065. Arthur Morris, for the appellant. James Maxwell Fossett (Philip B. Matthews with him on the brief), for the respondents.

Five-year voting trust limitation in Real Property Law held inapplicable to a collateral trust resulting from reorganization of corporate bonds, where collateral securing the bonds and real properties underlying mortgages constituting collateral were not reorganized. The New York Supreme Court, Appellate Division, First Department, has recently ruled that the provision of subsection 2 of section 130-c of the Real Property Law providing, in part, that "no agreement appointing trustees to vote the stock of any corporation formed or used under a plan of reorganization of property shall be valid for a longer term then five years," applies only to reorganizations dealing directly with real estate. The court also held that this section had no application to a voting trust of the stock of a company involved in a reorganization plan under which the bonds of the predecessor of that company were reorganized, but where neither the collateral securing the bonds nor the real properties underlying the mortgages constituting that collateral were reorganized. It was indicated by

the court that the life of this voting trust was ten years. *Prudence Realization Corp. v. Atwell et al.*, New York Supreme Court, Appellate Division, First Department, July 3, 1942. Commerce Clearing House Court Decisions Requisition No. 285465. Irving L. Schanzer of New York City, for plaintiff. Mark F. Hughes (Alfred J. Callahan with him on the brief; Willkie, Owen, Otis, Farr & Gallagher, attorneys) of New York City, for defendants.

Foreign Corporations

California.

Unqualified foreign corporation held empowered to maintain suit where engaged solely in interstate and foreign commerce. Petitioner was a foreign corporation, engaged in California solely in interstate and foreign commerce. The District Court of Appeal, Second District, Division 2, ruled that petitioner could maintain suit, although it had not recorded certified copies of its articles of incorporation with the secretary of state and county clerk, as required by section 405, Civil Code, since those requirements are not applicable to foreign corporations engaged solely in interstate and foreign commerce and the disability concerning the maintenance of suit found in the statute is related to intrastate business. *Dant & Russell, Inc. v. Board of Supervisors of Los Angeles County, et al.,** 128 P. 2d 389. Stanton & Stanton and Henry C. Ruhr of Los Angeles, for appellant. J. H. O'Connor, Co. Counsel, and Gordon Boller, Deputy Co. Counsel, of Los Angeles, for respondents.

* The full text of this opinion is printed in **The Corporation Tax Service, California, page 3178.**

Idaho.

Service upon sales manager of unlicensed foreign corporation upheld. Action was brought by a Michigan corporation against a Texas corporation, not licensed in Idaho, in the United States District Court, District of Idaho, Southern Division, on the ground of diversity of citizenship. Service was made upon a sales manager of defendant in Idaho, whose activities covered twenty-six states, supervising sales with wholesalers, assisting in sales work, looking after collections, keeping customers sold on the company's product and carrying on other general sales work. He spent at least sixty days a year in Idaho as sales manager in promoting defendant's business, making collections and sales. Defendant had consignment agreements with distributors or jobbers for its product and operated at times on a commission basis with others. The court regarded the evidence as showing "the defendant had brought its property into the State and retaining title thereto until it was sold in some instances at such price it could fix after being in the State." The court overruled defendant's motion to quash the service, concluding "that all acts and things the defendant did combined, constituted doing business." *Straight-*

". . . Between January 1 and March 31," writes the Treasurer of a certain medium-sized corporation, "259 corporate reports must be filed by this company and fees paid. Before the close of the year, at least 270 more reports must be filed and fees paid . . . they do not include reports filed under Social Security laws or corporate K-10 forms of the Securities Commission."

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Side Basket Corporation v. Cummer Graham Company, United States District Court, District of Idaho, Southern Division, April 15, 1942. Commerce Clearing House Court Decisions Requisition No. 281802. Richards and Haga of Boise, for plaintiff. George Donart of Weiser and Frederick P. Cranston of Denver, Colorado, for defendant.

Louisiana.

Dissolution of corporation in 1941 held to abate 1939 federal indictment as to company. A Texas company was one of the defendants indicted in proceedings to recover a penalty in the United States District Court, Eastern District of Louisiana, New Orleans Division, in August, 1939. The corporation was found to have been dissolved, in "good faith," in 1941, at the instance of another corporation, engaged in the same business, which had come into the ownership of a majority of the former's capital stock. The court abated the indictment so far as it related to the dissolved company, holding that, "under general common law," the dissolution operated the abatement of the indictment and all proceedings thereunder as to the company. *United States of America v. Leche et al.*, 44 F. Supp. 765. Commerce Clearing House Court Decisions Requisition No. 281128. Robert Weinstein, Assistant United States Attorney. J. Hart Willis and Dillard Estes of Dallas, Texas, and W. P. Z. German of Tulsa, Oklahoma.

Receiver appointed for defunct foreign corporation having property in Louisiana. Plaintiff was the majority stockholder and the only creditor of a Virginia corporation, the charter of which had been annulled in 1933 for failure to pay its annual registration fee and franchise tax. The corporation, after having been qualified to do business in Louisiana, had withdrawn in 1933. The last stockholders' meeting had been held in 1930 and the last directors' meeting occurred in 1938. Certain property of the company still existed in Louisiana, consisting of a one-fifth interest in the profits realized or to be realized from two oil and gas companies from the working interest under a lease on Louisiana property and the reversionary interest in the property appertaining thereto, including the wells, pipe lines, etc. Plaintiff sought to have a receiver appointed in Louisiana to take charge of the property of the corporation there. The Supreme Court of Louisiana ordered the appointment of such a receiver, noting that there was jurisdiction over the corporation's property actually in the parish in which the suit was brought and that the plaintiff had the right to insist that the court should exercise its jurisdiction to that extent. Conceding that the courts of Virginia would have jurisdiction to appoint a receiver, the court regarded this as an unnecessary formality and a useless expense, as it would then be necessary to have an ancillary receiver in Louisiana to dispose of the property there. *Simms v. Coastal Oil & Fuel Corporation et al.*, 9 So. 2d 428. W. P. Hamblen of Houston, Tex., and Pugh, Buatt & Pugh of Crowley, for appellant. Joseph S. Gueno, Jr., and H. Purvis Carmouche of Crowley, for appellees.

New Jersey.

Service on merchandise broker, acting as such for many corporations, set aside where made upon one of the companies represented. A foreign manufacturing corporation employed a broker to solicit its New Jersey business who also acted in the same capacity for many other manufacturers. He sold by sample to jobbers and "syndicate stores" and was paid by the manufacturers on a commission basis. Orders received were mailed to the manufacturer for acceptance. Service of process was made upon the broker as agent of the foreign corporation first mentioned. This was vacated by the Supreme Court of New Jersey, which regarded the service as ineffectual because the broker's relation to the company "was not such as to constitute him its representative for the service of process in an action in personam." *Porcelli et al. v. Great Atlantic & Pacific Tea Co. et al.*, 27 A. 2d 641. Harvey G. Stevenson of Newark, for the rule. Schwartz & Schwartz, of Newark (Saul Mendelson of Jersey City, of counsel), contra.

New York.

Court of Appeals upholds Appellate Division in accepting jurisdiction of action against foreign bank, engaged in foreign commerce, having accounts and property in a New York bank. Banque de France, a corporation organized under the laws of France, transacted business in New York which was purely incidental to its business in France, which was that of a commercial bank and of the central bank of issue of France. It customarily maintains large bank balances in New York. Two residents of New York, claiming to be assignees of a cause of action had by Banque National de Belgique, a corporation of Belgium, had obtained a warrant of attachment against the property in New York of Banque de France and levied upon the accounts and property of the latter held by the Federal Reserve Bank in New York. After a summons was served by publication upon Banque de France, it appeared specially, challenging the jurisdiction of the New York courts to take jurisdiction of the action sought to be instituted by the assignees. This challenge was rejected by the New York Supreme Court, which denied leave to appeal to the Court of Appeals. The Banque de France then petitioned, in this proceeding, to restrain the Supreme Court from entertaining or exercising jurisdiction of the action of the assignees. Its petition was dismissed by the Appellate Division. Upon appeal from this order of the Appellate Division, the Court of Appeals affirmed the order, specifically refraining from discussing the merits of the suit. The court assumed the appellant, Banque de France, "does business and exercises functions connected with commerce with the United States and which tend to promote such commerce." It concluded that the exercise of jurisdiction by the Supreme Court in the attempted suit was not obnoxious to the commerce clause. *Banque de France v. Supreme Court of State of New York et al.*, 287 N. Y. 483, 41 N. E. 2d 65. Mahlon B. Doing and Frederic R. Coudert of New York City, for

appellant. John Foster Dulles, Robert E. Houston, Jr., and MacDonald Deming of New York City, for Daniel De Gorter et al., respondents.

Books and papers of unlicensed foreign corporation, doing business in state, held subject to inspection by director of the corporation. In a proceeding in the nature of mandamus, instituted pursuant to Article 78 of the Civil Practice Act to compel the corporate respondent, a foreign corporation, and the individual respondent, its president, to permit appellant, a director of the company, to examine and inspect corporate books and papers, and for other relief, the New York Supreme Court, Appellate Division, Second Department, said: "Upon the conceded facts, the corporate respondent, although not licensed to do business in this State, is here with its officers, doing such business in that it is rendering services in this State in the management of the Sanford Hotel in Flushing, N. Y., not casually, but with a fair measure of continuity. It is doing business within the State and is present therein. The court is warranted in assuming jurisdiction under these circumstances, and it is its duty, in our opinion, to assume such jurisdiction. The appellant, as a director of the corporate respondent, has an absolute, as distinguished from a qualified, right to examine its books and papers." *Lavin v. J. C. Lavin Co., Inc. et al.*,* 34 N. Y. S. 2d 947. Commerce Clearing House Court Decisions Requisition No. 282910. Meyer Kraushaar, of New York City, for appellant. Leo E. Sherman (Bertram L. Roberts of New York City, on the brief) for respondents.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 20,681.

Pennsylvania.

Pennsylvania Federal Court dismisses stockholders' derivative suit seeking to apply to a Delaware company statutes of New York and Massachusetts limiting extent of a corporation's investments in stock of domestic railroad companies. In a stockholders' derivative action against the directors of a Delaware corporation, it was charged that the directors caused the corporation to purchase and hold stock of the Boston & Maine Railroad in violation of the statutes of New York and Massachusetts, and that a loss resulted therefrom, for which an accounting was sought. The United States District Court, E. D. Pennsylvania, noted that statutes of New York and Massachusetts prohibited corporations from owning more than 10% of the capital stock of railroad corporations organized under the laws of the respective states. The Delaware company owned 19½% of the stock of the railroad mentioned. The court observed that this railroad was a consolidated corporation, existing under the laws of New York, Massachusetts, New Hampshire and Maine. It concluded that the statutes of New York and Massachusetts referred to had no application to the Delaware company's general corporation affairs taking place beyond those states' boundaries and therefore did not control the purchase of the railroad stock made by that company and dis-

missed the bill of complaint. *Steckler v. Pennroad Corporation et al.*, 44 F. Supp. 800. James Howard Molloy of Philadelphia, for plaintiff. R. Sturgis Ingersoll, C. B. Heiserman and Lewis M. Stevens of Philadelphia, Elder W. Marshall of Pittsburgh, and Thomas Stokes and W. Heyward Myers, Jr., of Philadelphia, for defendants.

South Dakota.

Service on Secretary of State, as agent of qualified New Jersey corporation which had been dissolved prior to such service, upheld. Defendant New Jersey corporation, licensed in South Dakota, moved to quash service of summons on its appointed agent, the Secretary of State, on the ground that it had been dissolved prior to the service. The Supreme Court of South Dakota affirmed an order overruling the motion. It noted that New Jersey companies which are dissolved are, by statute, "continued bodies corporate for the purposes of prosecuting and defending suits by or against them" and for other purposes. The court also stressed that, under the South Dakota law, the appointment of the Secretary of State as process agent continues in force "irrevocably so long as any liability of such corporation remains outstanding in this state." "If," continued the court, "defendant corporation merely withdrew and ceased to do business within the state, the appointment would have continued in effect so long as any liability against the defendant remained. The present situation where the dissolved corporation continues as a body corporate for the purpose of prosecuting and defending suits by and against it is not distinguishable." *Floerchinger v. Sioux Falls Gas Co.*, 5 N. W. 2d 55. Chapman & Nisbet of Sioux Falls, for appellant. Charles Lacey of Sioux Falls, for respondent.

Taxation

Kentucky.

Taxation by state of postal savings deposits at a general property tax rate five times that imposed upon deposits in banks, held discriminatory and a burden upon an instrumentality of the federal government. The Kentucky statutes prescribe a tax upon deposits in state banks and national banks of the state at ten cents per $100 valuation, upon real estate at five cents per $100 valuation, and upon all other property at fifty cents per $100 valuation. Appellee, the trustee in bankruptcy of a corporation in reorganization, refused to pay the state tax upon funds of the debtor in a postal savings depository of the United States situated in Kentucky, such savings having been considered by appellant Commissioner of Revenue as coming within the classification of "all other property" and assessed at the fifty cent rate. The question before the United States Circuit Court of Appeals, Sixth Circuit, was whether this constituted a legitimate exercise of the state taxing power. The District Court had held the assessment invalid and dismissed the petition, upon the ground that taxation of

postal savings deposits constituted a direct interference by the state with the exercise of federal power and upon the further ground that taxation at the rate imposed placed a discriminatory burden on an activity of the federal government. The order of the District Court dismissing the petition was affirmed, the court observing: "This discriminatory tax sought to be laid by the state upon United States postal savings deposits constitutes such a substantial burden upon an instrumentality and activity of the federal government as to be beyond the power of the state to impose. Postal savings institutions are a part of the structure of the federal government and entitled under the constitution to the same immunity from interference by the state as other federal instrumentalities." "Obviously, taxing postal savings certificates, and the deposits which they represent five times as much as deposits in banks within the state, will cripple the extension, and within Kentucky possibly destroy the use of postal savings. If these deposits are to be taxed at such a rate in comparison with ordinary bank deposits throughout the forty-eight states, the use of postal savings depositories may be practically terminated. It follows that this tax cannot be upheld." *In the Matter of Kentucky Fuel Gas Corporation et al.,** 127 F. 2d 657. Hubert Meredith, Attorney General, and H. Appleton Fedra, Assistant Attorney General of Frankfort, for appellant. Robert T. Caldwell and Porter M. Gray of Ashland, for appellee. *(Appeal filed in the Supreme Court of the United States under the title of Reeves v. Williamson, July 27, 1942; Docket No. 259. Appeal dismissed for the want of jurisdiction; petition for writ of certiorari denied, October 19, 1942.)*

* The full text of this opinion is printed in **The Corporation Tax Service**, Kentucky, page 2556.

Montana.

State Supreme Court reverses its former position by holding that a foreign corporation, dissolved and ceasing business in December, 1937, is not subject to a corporation license tax based on income for that year. On December 4, 1941, the Montana Supreme Court, in *State v. Maguire Construction Co.*, 125 P. 2d 433, (The Corporation Journal, March, 1942, page 130), ruled that a foreign corporation which had ceased to do business in Montana was required to file a license tax return and pay the license tax for the portion of the last year during which it had carried on business in the state. The corporation was qualified in Montana in April, 1934, paid the franchise tax in 1935, 1936 and 1937, computed each year upon the net income from its business transacted in the state during the preceding year. It discontinued business in the state on December 6, 1937, when it was dissolved. It resisted payment of a corporation license tax computed upon business transacted between January 1, 1937 and December 6, 1937. The Montana Supreme Court, reversing its former ruling, redecided the case on May 7, 1942, and held that no further tax was due from the company, observing: "The 1937 year's

income could not have been employed in computation of any tax unless the corporation had been carrying on business in the state in 1938, in which event it would then have served as the measure of the tax for that year, under the present law." *State v. Maguire Construction Co. et al.*,* Montana Supreme Court, May 7, 1942. Commerce Clearing House Court Decisions Requisition No. 281584. R. F. Gaines of Butte, for appellants. John W. Bonner, Attorney General; I. W. Choate and Ralph Anderson, of Helena, for respondent.

* The full text of this opinion is printed in **The Corporation Tax Service**, Montana, page 1594.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

FEDERAL. Docket No. 22. *Helvering, Commissioner of Internal Revenue v. Sprouse*, 122 F. 2d 973. (The Corporation Journal, April, 1942, page 158.) Federal income tax—stock dividend paid in non-voting common stock of corporation. **Appeal filed, January 21, 1942. Certiorari denied, March 2, 1942. Petition for rehearing denied, March 30, 1942. Order denying certiorari vacated, and petition for writ of certiorari granted, May 11, 1942.**

FEDERAL. Docket No. 66. *Strassburger v. Commissioner of Internal Revenue*, 124 F. 2d 315. (The Corporation Journal, March, 1942, page 134.) Federal income tax—stock dividend in preferred stock declared by corporation which had only one class of stock outstanding, all owned by one person. **Appeal filed, April 3, 1942. Certiorari granted, May 11, 1942.**

KENTUCKY. Docket No. 259. *Reeves v. Williamson, Trustee of the Kentucky Fuel Gas Corporation*, 127 F. 2d 657. (The Corporation Journal, November, 1942, page 257.) State taxation—validity of Kentucky property tax on postal savings certificates. **Appeal filed, July 27, 1942. Appeal dismissed for the want of jurisdiction; petition for writ of certiorari denied, October 19, 1942.**

* Data compiled from CCH **U. S. Supreme Court Service**, 1942-1943

Regulations and Rulings

CALIFORNIA—A license to operate a cold storage warehouse may not be transferred. Such license does not pass to the surviving corporation with which the licensee is merged. (Opinion, Attorney General, California CT (Corporation Tax) Service, ¶ 30-712.)

DISTRICT OF COLUMBIA—If a sales contract requires the seller to deliver goods to the buyer in the District of Columbia or to pay the freight or cost of transportation to the buyer in the District, title to the property does not pass until the goods have been delivered within the District, and a foreign corporation making sales and delivery of personal property into the District in such a manner would be deriving income from District of Columbia sources and therefore would be required to comply with the provisions of the District of Columbia income tax law. (Opinion of the Corporation Counsel, District of Columbia CT, ¶ 14-007.)

MAINE—The returns and reports filed by domestic and foreign corporations are open for public inspection. (Letter, Acting Secretary of State, Maine CT, ¶ 7836.)

MISSOURI—The Attorney General has rendered an opinion to the effect that the use fuel tax imposed under H. B. No. 516, Laws 1941, upon the use of fuels to propel motor vehicles upon the highways, may be collected from those who use such fuel in Missouri while engaged solely in interstate commerce. (Missouri CT, ¶ 40-102a.04.)

NORTH DAKOTA—Sales to non-residents completed in North Dakota are not exempt from the sales tax as sales in interstate commerce. Where, however, delivery is to be made in the foreign state of the buyer, either by the seller, or via a carrier, it is interstate commerce and exempt from the tax. (Opinion of the Attorney General, North Dakota CT, ¶ 7997c.)

SOUTH DAKOTA—The Division of Taxation has indicated that voluntary payments by employers of amounts due from their employees for Federal Social Security or State Employment Compensation Benefits are not deductible in computing the employer's state net income tax. (South Dakota CT, ¶ 15-010.)

TENNESSEE—The Attorney General of Tennessee has advised the Secretary of State that a foreign corporation which has withdrawn from the state stands in the same position as though it had never been domesticated and that domestication fees must be paid anew, there being no statutory provision made for reinstatement by paying up all past due fees. (Tennessee CT ¶ .416.)

A foreign trust company proposing to serve as trustee of a Tennessee trust must domesticate in Tennessee in order to administer the trust. (Opinion, Attorney General to Secretary of State, Tennessee CT, ¶ .417.)

TEXAS—The surrender of shares of capital stock by the individual shareholder to the issuing corporation for cancellation and extinguishment is not subject to the stock transfer tax. (Opinion of Attorney General, Texas CT, page 6392.)

Some Important Matters for November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Income Tax due on or before January 1.—Domestic and Foreign Corporations.

GEORGIA—Annual License Tax Report and Tax due on or before January 1.—Domestic and Foreign Corporations.

NEW YORK—Second Installment of Franchise (Income) Tax of Business Corporations due on or before November 15 (or within 30 days after notice, if given later than October 15; payable not later than January 15, in any event).—Domestic and Foreign Business Corporations other than real estate and holding companies.

Supplementary Franchise Tax Return (Form 60 CT) due on or before November 30.—Domestic and Foreign Corporations organized or qualified between May 14 and November 1 of current year.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1941 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

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